

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

LML PATENT CORP.,

Plaintiff,

v.

JPMORGAN CHASE & CO., et al.,

Defendants.

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CIVIL ACTION NO. 2:08-CV-448 (DF)

O R D E R

The Court held a hearing on the Motion of Defendants JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. (“JPMC”) to Dismiss Plaintiff’s Fifth Amended Complaint Under *Bilski* (Dkt. No. 429) on July 29, 2010. *See* 7/29/2010 Minute Entry, Dkt. No. 572. JPMC filed its motion on April 19, 2010, and briefing on that motion closed on May 28, 2010. JPMC’s written motion is based on the decision of the Court of Appeals for the Federal Circuit in *In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008). On June 28, 2010, the Supreme Court of the United States ruled on the appeal of *In re Bilski*. *See Bilski v. Kappos*, 561 U.S. ----, 130 S.Ct. 3218 (2010).

As the Court stated at the July 29, 2010 hearing, resolution of JPMC’s motion will be best served by the filing of an amended motion that addresses the Supreme Court’s *Bilski* decision. In light of the Court’s upcoming trial docket in the Marshall Division, the Court set a hearing on such motion for August 23, 2010, at 10:00 A.M. in Texarkana. The Court set an expedited briefing schedule, directing JPMC to file its amended motion by August 9, 2010, and directing a response by August 16, 2010, and a reply by August 20, 2010.


Now before the Court is JPMC’s August 4, 2010 letter seeking permission to file JPMC’s

Bilski motion as a motion for summary judgment instead of as a motion to dismiss. JPMC submits, for example, that proceeding in this fashion will promote judicial economy by allowing JPMC to brief only the ten asserted claims of the patent-in-suit rather than all 100 claims thereof. Plaintiff, also by August 4, 2010 letter, states it does not oppose JPMC's request proceed in this manner. The parties agree that the Court's expedited briefing schedule and August 23, 2010 hearing date will apply to JPMC's proposed motion for summary judgment.

The Court previously ordered that leave of Court must be obtained before any motion for summary judgment may be filed. *See* 10/1/2009 Amended Order, Dkt. No. 262; 5/8/2009 Order, Dkt. No. 178. Given that Plaintiff does not oppose conversion of JPMC's motion to dismiss to a motion for summary judgment, JPMC's request to file a motion for summary judgment on "failure of the [patent-in-suit] to claim patentable subject matter" (*see* 8/4/2010 letter from Pappas) is hereby **GRANTED**.

IT IS SO ORDERED.

SIGNED this 6th day of August, 2010.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE